

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., et al.,

Defendants.

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CIVIL ACTION NO. 2:22-CV-00294-JRG


ORDER

The Court issues this Order *sua sponte*. On April 22, 2024, Micron filed its Notice of Final Election of Invalidity Theories, Prior Art References/Combinations, and Equitable Defenses (the “Notice”). (Dkt. No. 106.) In the Notice, Micron stated that it “provide[s] the following list of invalidity theories, prior art references and combinations, and equitable defenses that they continue to assert against Netlist, Inc. (“Plaintiff”).” (*Id.*) However, Micron did not provide a list within or attached to its Notice. (*Id.*) Instead, Micron stipulated that “based on the Patent Trial and Appeal Board’s institution of IPR2023-00203 for U.S. Patent No. 7,619,912 and IPR2023-01141 for U.S. Patent No. 11,093,417, Micron will no longer pursue invalidity defenses in this action (C.A. No. 2:22-CV-00294-JRG) that the patent claims subject to the instituted IPRs are invalid based on grounds that were raised or reasonably could have been raised in the IPRs.” (*Id.*) It is unclear whether this stipulation means that Micron is not pursuing any invalidity or equitable defenses—including its written description defense and its equitable defenses—or whether it means Micron is only withdrawing the defenses that “could have been raised in the IPRs.” (*See id.*)

Accordingly, the Court hereby **ORDERS** Micron to file an updated Notice of Final Election of Invalidity Theories, Prior Art References/Combinations, and Equitable Defenses stating in no uncertain terms whether it will be asserting any invalidity defenses or equitable defenses and, if so, what defenses it will be asserting. Micron shall file this updated Notice no later than **Thursday, May 16, at 5:00 p.m. CST.**

So Ordered this

May 14, 2024



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE